HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.3244 of 2001
Date of decision : 14.02.2007

Jagmal Singh and another **.....Petitioners**

versus

Smt. Parwati Devi **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.K.Jain, Advocate and
Mr.Vivek Goel, Advocate for the petitioner.
Mr.Sanjay Vij, Advocate for the respondent. .

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ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court dated 11.04.2001, whereby the application filed by the defendant-petitioners for directing the plaintiff to affix the ad valorem Court fee and treating such issue as preliminary issue, was declined.

The plaintiff has filed a suit for declaration and permanent injunction challenging the decree dated 28.11.1990. The plaintiff also claimed the estate of deceased Maha Singh on the basis of registered Will dated 13.3.1995. It is the case of the plaintiff that after the filing of the suit for injunction, the plaintiff has been dispossessed and, therefore, she is entitled to possession as well.

The learned trial Court has found that the question whether the plaintiff was in possession of the suit property at the time of filing of the suit or dispossessed later on is the question which is to be decided

after leading the evidence by both the parties. Such issue regarding Court fee and jurisdiction cannot be treated as preliminary issue.

The suit is for declaration claiming that decree dated 28.11.1990 is a result of fraud and misrepresentation. The plaintiff has claimed herself to be in possession of the suit land at the time of filing of the suit. Even if the plaintiff is in possession of the suit land, still the Court fee payable is to be quantified under Section 7 (v) of the Court Fees Act, 1870 (hereinafter referred to as the Act) and not in terms of Article 1 Schedule 1 of the Act.

Therefore, the finding whether the plaintiff was in possession of the suit land on the date of filing of the suit is a disputed question of law and fact and cannot be said to be result of any illegality or irregularity which may warrant interference of this Court in exercise of its revisional jurisdiction.

The present revision petition is dismissed.

(HEMANT GUPTA)
JUDGE

February 14, 2007
**mohinder*